United States Court of Appeals

for the Second Circuit

APPENDIX

75-7407

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 75-7407

LUDDIE FORT

JAMES BOOKWALTER

Plaintiffs/Appellants

VS.

ROBERT C. WHITE D/B/A

ROBERT C. WHITE CO., REALTORS

Defendant/Appellee

JOINT APPENDIX

Arnold E. Buchman, Esquire
101 Pearl Street
Hartford, CT

James Callahan, Esquire
60 Washington Street
Hartford, CT

Counsel for the Appellee

Bruce C. Mayor
190 Trumbull Street
Hartford, CT

Counsel for the Appellants

4

PAGINATION AS IN ORIGINAL COPY

INDEX

DATE 1974	PROCEEDINGS	Date Order Judgment No
6-14	1. Complaint and Motion for Preliminary Injuction, and ORDER to Show Cause filed. Blumenfeld, J. (Hearing 6/25/74) m 6/17/74 Summons issued and together with same and copies of complaint and attested copies of Order handed to Mr. Mayor who was to give them to the Marshal for service.	
6-21	2. Appearance of Arnold E. Buchman entered for defendant, Robert C. White.	
"	3. Marshal's return showing service.	
6-25	4. Motion to Dismiss Application for Preliminary Injuction filed by Def.	
"	5. Defendant's Memorandum in Support of Motion to Dismiss Application for Preliminary Injunction filed.	
6-27	HEARING on Pltf. Order to Show Cause Why Preliminary Injunction Should not Issue. Defendant's Motion to Dismiss DENIED by Court, Opinion to Follow. One PLTF. witness sworn and testified. One defendant witness sworn and testified. Def. Exhibit 1 filed. Court exhibits 1,2 & 3 filed. Hearing on Merits to be consolitated with Hearing on Temporary Injunction. Motion for Temporary Injunction DENIED. Trial of this case to be held early in Fall, without regard to Order or Docker. Court adjourned. Exhibits with Judge Blumenfeld.	
6-28	Transcript of proceedings held on 6/27/74. Collard, R.	
7-5	6. ANSWER filed.	
7-9	Placed on trial list.	
7-23	7. Appearance of Albert J. Callahan entered for the defendant.	
"	8. Interrogatories filed by the defendant to Luddie Fort.	
"	9. Imterrogatories filed by the defendant to James Bookwalter.	
9-3	10. Answer to Interrogatories filed by Pltf.	
9-[illegible]	11. Transcript of proceedings held on 6/27/74. Collard, R.	
9-[illegible]	12. Answers to Interrogatories, filed by defendant.	
9-25	13. Ruling on Motion to Dismiss, Blumenfeld, J. (denied). m 10-29. Copies mailed to counsel of record.	
11/5	Court Reporter's Notes of Proceedings held on June 27, 1974, filed in Hartford. (Collard, R.)	
2-17	TRIAL ON MERITS, Three (3) Plaintiffs witness sworn and testified.	
12-18	14. CONSENT DEGREE, Blumenfeld, J. m 12-20. Copies mailed to counsel of record.	
2-18	TRIAL CONTINUES, Pltf witness previously sworn resumes stand. Five (5) plaintiffs witnesses sworn and testified. Four (4) defendants witnesses sworn and testified. Pltf.'s exhibits A, B, & C. filed. Def. exhibit 1 filed. Court exhibit 1. Brief by parties in two weeks- 5 days for reply if necessary. Court adjourned.	
12-31	15. Defendants Trial Memorandum.	
6-75	16. Plaintiff's Brief filed.	
1-8	17. Defendant's Reply Memorandum.	
1/24	Court Reporter's Notes of Proceedings held on December 17 and 18, 1974, filed in Hartford. (Collard R.)	
-20	18. Certification Re: reports and materials mailed to Plaintiffs.	
-13	19. Memorandum of Decision, Blumenfeld, J. m 3-13-75. Copies mailed.	
9	20. Motion for Amended Findings. filed by Pltf	
3-27	21. Affidavit of Bruce Mayor.	
"	22. Motion to Reconsider Denial of Counsel Fees and Punitive Damages.	
3	Motion #22 DENIED. Blumenfeld, J. m 4-3-75. Copies mailed.	
-22	23. Ruling on Motion to Amend Findings., Blumenfeld, J. m 4-23-75. Copies mailed to counsel.	
5/14	24. Compliance with Sec. IV B of the Consent Degree of 12/18/75 filed by def.	
30	25. JUDGMENT entered. Markowski, C, m 6-30-75. Copies mailed to counsel.	
7-10	26. Notice of Appeal filed. Copies mailed to counsel, New Haven and to the U.S. Court of Appeals with copies of docket entries. $50.00 check mailed to U.S. Court of Appeals. Forms C & D mailed to Atty Mayor.	
7-24	27. Certification that Report has been sent to Pltf.'s Atty.	

DATE 1975	PROCEEDINGS	Date Judgm.
8-14	File mailed to New Haven.	
	A True Copy ATTEST: SYLVESTER A. HERMOSET Clerk, U. S. District Court By: C. M. Acee Deputy Clerk	

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

LUDDIE FORT, for herself and
for all those similarly situated

JAMES BOOKWALTER, for himself
and for all those similarly situated

Civil Action No. _____

PLAINTIFFS

VS.

ROBERT C. WHITE
d.b.a. ROBERT C. WHITE CO., REALTORS

DEFENDANT

JUNE 14, 1974

Bruce C. Mayor
190 Trumbull Street
Hartford, Connecticut 06103
Attorney for the Plaintiffs

Now come the Plaintiffs who complain and say:

1. This is a class action for declaratory relief, injunctive relief and damages to redress the deprivation of rights secured to the Plaintiffs by the Thirteenth and Fourteenth Amendments to the United States Constitution, by 42 U.S.C. § 1982 and by 42 U.S.C. §3604.

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 2201 and 2202 relating to declaratory judgments, to 28 U.S.C. § 1343 (3)-(4) relating to actions under 42 U.S.C. §1982 and to 42 U.S.C. § 3612 relating to actions brought to enforce 42 U.S.C. §3604.

3. The Plaintiff, Luddie Fort, is an adult black female, a citizen of the United States and a resident of the State of Connecticut.

4. The Plaintiff, James Bookwalter, is an adult caucasian male, a citizen of the United States and a resident of the State of Connecticut.

5. The Defendant, Robert C. White, is a resident of East Hartford, doing business as The Robert C. White Company Realtors. In that capacity, he has engaged, among other things, in the renting of apartments and in the managing of apartment buildings for others in the Greater Hartford community. The Defendant is the rental agent for a significant number of the apartment buildings in the City and County of Hartford, Connecticut and is a major apartment rental agent in the State of Connecticut.

6.a. The Plaintiff, Luddie Fort, brings this action pursuant to rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of

herself and all persons similarly situated. The class is composed of all black minority group members who are being denied equal opportunities in the rental of apartments in violation of the Fair Housing Laws of the United States (Title VIII of the 1968 Civil Rights Act) and who are being discriminated against because of their race by the defendant, his agents, servants and employees. The Plaintiff will fairly and adequately protect the interests of the class in this action for declaratory relief and for injunctive relief and her grounds are typical of the claims of other members of the class. The class is too numerous as to render joinder of all members impracticable and there are questions of law and fact common to all members of the class. Further, the Defendant has acted, or refused to act, on grounds generally applicable to this class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

b. The Plaintiff, James Bookwalter, brings this action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The class is comprised of all residents of apartment buildings for which the Defendant is the rental agent and who are being, and will continue to be, injured by the deprivation of the social and professional benefits of interracial associations caused by the Defendant's discriminatory housing practices. The Defendant is engaged in a pattern and practice of resistance, at the apartment building in which the Plaintiff Bookwalter resides and throughout the apartment buildings he manages and in which he rents apartments, to the full enjoyment of the rights granted by Title VIII of

the 1968 Civil Rights Act. The Plaintiff will fairly and adequately protect the interests of the class in this action for declaratory relief and for injunctive relief and his grounds are typical of the claims of other members of the class. The class is too numerous as to render joinder of all members impracticable and there are questions of law and fact common to all members of the class. Further, the Defendant has acted, or refused to act, on grounds generally applicable to this class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

7. The Defendant manages and rents apartments, under an agreement with the owner, at two adjacent buildings whose addresses are 166 and 176 Collins Street in the City of Hartford, Connecticut. These buildings are owned by William Ellis. The Plaintiff, Bookwalter, is a resident of 166 Collins Street.

8. On April 29, 1974, the Plaintiff Fort inquired by telephone of the Defendant's superintendent for 166 and 176 Collins Street whether there were any apartments available. She was informed by the Defendant's superintendent that there would be an apartment available at the end of the month and that she could come and see that apartment on the next day.

9. On April 30, 1974, the Plaintiff Fort went to 166 Collins Street, where the superintendent lived and had his office. She was told, at this time, by the Defendant's superintendent that there were no vacancies, that there had been no vacancies for months and that there would be no vacancies for months. Moreover, she was told that he had never spoken with her on the telephone.

10. The Defendant, in refusing to show the Plaintiff Fort the apartment which had been described to her over the telephone was discriminating against her in violation of 42 U.S.C. §3604 (a) and (d). Moreover, the Defendant was injuring and continues to injure the Plaintiff, Bookwalter, by engaging in practices that serve to cause and perpetuate the segregation along racial lines of the apartment building in which he resides.

11. Over the course of the next three days, the Defendant, through his superintendent for 166 and 176 Collins Street, indicated to six caucasian individuals, known to the Plaintiff Fort, that apartments were available. Each such caucasian individual was shown an apartment by the Defendant's superintendent at 176 Collins Street and was informed of an upcoming vacancy in 166 Collins Street.

12. Over the course of the same three-day period, the Defendant, through his superintendent at 166 and 176 Collins Street, indicated to four black individuals, known to the Plaintiff Fort, that there were no apartments presently available in either building and that no vacancies were expected for at least two months.

13. The ten individuals referred to in Paragraphs 11 and 12 were acting as "testers" and were doing so at the request of the Plaintiff Fort.

14. These same individuals, together with the Plaintiff and others, having cause to believe that the actions of the Defendant's superintendent at 166 and 176 Collins Street were part of a pattern and practice on the Defendant's part to perpetuate racial segregation in apartment rentals decided to "test" other properties managed and rented by the Defendant.

15. Over the next month, the Plaintiff Fort and the individuals referred to above "tested" four other apartment buildings for which the Defendant was the rental agent and the Defendant's office itself. Their "tests" revealed that the Defendant, through his agents, servants and/or employees consistently, at his office and at the apartment buildings being tested, indicated the availability of apartments at those locations to the caucasian testers and consistently indicated the unavailability of apartments at those locations to the black testers.

16. The buildings tested were 7 Woodland Street, Hartford, which is owned by Richard S. Shlomberg and Bernard Lapuk, and 73 and 79 Myrtle Str and 98 Garden Street, Hartford, which are owned by The Connecticut Mutual Life Insurance Company. Messrs. Shlomberg and Lapuk and The Connecticut Mutual Life Insurance Company have contracted with the Defendant to rent and manage the above buildings.

17. The Defendant's discriminatory acts alleged above were not isolated, accidental or peculiar departures from a nondiscriminatory norm. The Defendant is engaged in a pattern and practice of resisting the mandate of Title VIII of the 1968 Civil Rights Act and is engaged in a pattern and practice of unlawful activity intended to segregate, along racial lines, the buildings referred to in the foregoing paragraphs, the smallest of which has approximately 15 apartment units and the largest of which has approximately 75 apartment units.

18. The Defendant is engaged in a pattern and practice of resisting the mandate of Title VIII of the Civil Rights Act of 1968 and is engaged in a

pattern and practice of unlawful activity intended to segregate along racial lines a substantial portion of the apartment buildings that he rents and manages.

19. The Plaintiffs have no remedy in law or otherwise for the harm done by the Defendant and are and will continue to suffer irreparable loss unless the acts and conduct of the Defendant complained of above are enjoined.

WHEREFORE, the Plaintiffs pray:

1. That this Court accept jurisdiction.

2. That this Court enter a declaratory judgment declaring the acts of the Defendant to be in violation of the Constitution and the laws of the United States.

3. That this Court issue a temporary and a permanent injunction enjoining the Defendant, his employees, servants and agents from:

a. Failing or refusing to rent a dwelling to any person because of race, color, religion or national origin and from making any dwelling unavailable to any person on account of race, color, religion or national origin.

b. Discriminating against any person in the terms, conditions or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith because of race, color, religion or national origin.

c. Making, printing, or publishing or causing to be made, printed or published, any notice, statement or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion or national origin, or an intention to make such preference, limitation or discrimination.

d. Representing to any person because of race, color, religion or national origin that any dwelling is not available for inspection or rental when such dwelling is in fact so available.

e. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act of 1968.

4. That this Court issue a temporary and a permanent injunction requiring the Defendant to adopt and implement an affirmative program to correct the effects of his past discriminatory practices at all of the apartment buildings in which he rents apartments.

5. That this Court issue a temporary and a permanent injunction requiring the Defendant to maintain for, and to file with this Court, records containing the name, address and race of each individual inquiring about the availability or terms of rental of an apartment and further containing the Defendant's actions in response thereto.

6. That this Court award the Plaintiff Luddie Fort actual and punitive damages pursuant to 42 U.S.C. §3612(c).

7. That this Court award the Plaintiff Luddie Fort actual and punitive damages pursuant to 42 U.S.C. §1982.

8. That this Court award the Plaintiff Bookwalter actual and punitive damages pursuant to 42 U.S.C. §3612(c).

9. That this Court award the Plaintiffs' costs and reasonable attorney's fees.

Bruce Mayor
Attorney for the Plaintiffs
190 Trumbull Street
[illegible]

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LUDDIE FORT, for herself and for all those similarly situated, ET AL	:	
v.	:	CIVIL NO. H-74-139
ROBERT C. WHITE d/b/a ROBERT C. WHITE CO., REALTORS	:	

RULING ON MOTION TO DISMISS

This suit was brought as a class action by Luddie Fort against Robert C. White, doing business as Robert C. White Co. White is a local realtor who manages approximately 50 apartment buildings. This suit complains of alleged racial discrimination by White against Fort, a black, and other similarly situated in the rental of apartment units. The plaintiffs invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1343(3)-(4) (1970) and 42 U.S.C. § 3612 (1970) to secure relief from conduct made illegal by 42 U.S.C. §§ 1982, 3604 (1970).

The complaint, in brief, alleges that on April 29, 1974, Fort called the superintendent of one of White's buildings and asked if there were any vacancies. The superintendent, Mr. Bedard, indicated that an apartment fitting her specifications was at present occupied by a law student who would soon be vacating. When Fort showed up the next morning to view the apartment, however, Bedard denied having

talked to her on the telephone and told her that there were no vacancies at present and would be none for months.

Becoming suspicious, Fort helped to arrange to have the apartment building "tested." Six white and four black acquaintances of Fort's inquired of the superintendent about vacancies. The whites were told that apartments were available; the blacks were told that there were no vacancies. Over the next month Fort helped to arrange tests of four other buildings managed by White, as well as his company's office. The plaintiffs' complaint states that these tests revealed similar discriminatory practices.

On the basis of these allegations the plaintiffs moved for a preliminary injunction to require White "to refrain from, and to correct his pattern and practice of violating 42 U.S.C. § 3604 in the rental of apartment units." White filed the instant motion to dismiss the application for a preliminary injunction.

At a hearing before this Court on June 27, 1974, the defendant's motion to dismiss was denied, with this opinion to follow. The plaintiffs' application for a preliminary injunction was also denied from the bench based on the Court's finding that they faced no irreparable injury: the evidence showed that "the practice complained of, whether it existed or not, is now being amply safeguarded against any possible continuance." Excerpt of Transcript, June 27, 1974, at 11.

White's Motion to Dismiss

The defendant's first contention is that by complaining of a "pattern and practice" of discrimination the plaintiffs were not stating a claim under 42 U.S.C. § 3612 (1970). That section provides a right to sue for relief from conduct made illegal by 42 U.S.C. §§ 3603-06 (1970); those sections do not use the words "pattern and practice" in describing the discriminations prohibited.[1/] White's second contention is that the broad relief requested by the plaintiffs cannot properly be given under 42 U.S.C. § 3612 (1970).[2/]

1/ The relevant prohibitions are contained in 42 U.S.C. § 3604 (1970) and make it unlawful:

> "(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.
>
> . . . .
>
> "(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available."

2/ The plaintiffs' complaint requests:

> "1. That this Court accept jurisdiction.
>
> "2. That this Court enter a declaratory judgment declaring the acts of the Defendant to be in violation of the Constitution and the laws of the United States.
>
> "3. That this Court issue a temporary and a permanent injunction enjoining the Defendant,

White's first argument is based on inferences drawn from the structure of the Code. Section 3612 provides, inter

2/ cont'd

his employees, servants and agents from:

"a. Failing or refusing to rent a dwelling to any person because of race, color, religion or national origin and from making any dwelling unavailable to any person on account of race, color, religion or national origin.

"b. Discriminating against any person in the terms, conditions or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith because of race, color, religion or national origin.

"c. Making, printing, or publishing or causing to be made, printed or published, any notice, statement or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion or national origin, or an intention to make such preference, limitation or discrimination.

"d. Representing to any person because of race, color, religion or national origin that any dwelling is not available for inspection or rental when such dwelling is in fact so available.

"e. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act of 1968.

"4. That this Court issue a temporary and a permanent injunction requiring the Defendant to adopt and implement an affirmative program to correct the effects of his past discriminatory practices at all of the apartment buildings in which he rents apartments.

"5. That this Court issue a temporary and a permanent injunction requiring the Defendant to maintain for, and to file with this Court, records containing the name, address and race of each individual inquiring about the availability or

alia, that private persons may sue in federal court to enforce the rights granted by §§ 3603-06;[3/] § 3613 provides:

2/ cont'd

terms of rental of an apartment and further containing the Defendant's actions in response thereto.

"6. That this Court award the Plaintiff Luddie Fort actual and punitive damages pursuant to 42 U.S.C. §3612(c).

"7. That this Court award the Plaintiff Luddie Fort actual and punitive damages pursuant to 42 U.S.C. §1982.

"8. That this Court award the Plaintiff Bookwalter actual and punitive damages pursuant to 42 U.S.C. §3612(c).

"9. That this Court award the Plaintiffs' costs and reasonable attorney's fees."

3/ 42 U.S.C. § 3612 (1970):

"(a) The rights granted by section 803, 804, 805, and 806 [42 USC §§ 3603-3606] may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: Provided, however, That the court shall continue such civil case brought pursuant to this section or section 810(d) [42 USC § 3610(d)] from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court . . . .

"(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court

> "Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title."

From these two sections White argues that actions alleging a "pattern and practice" of discrimination are properly brought only by the Attorney General.

White's second argument, which deals with the scope of relief available to the plaintiffs, is also based on inferences drawn from the structure of the Code--in this instance White

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3/ cont'd

> of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.
>
> "(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees."

relies on provisions for relief in the two sections previously considered plus the provisions of § 3610. Section 3610 provides that one who has been injured by a discriminatory housing practice may file a complaint with the Secretary of Housing and Urban Development who, if he decides to resolve the complaint, will attempt to negotiate a settlement. If the Secretary is unable to secure compliance with the law within 30 days, the complainant is remitted to his right to sue in state or federal court. If the suit is brought in federal court and "the court finds that a discriminatory housing practice has occurred or is about to occur, the court may . . . enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate." 42 U.S.C. § 3610(d) (1970).

The statutory pattern thus provides three separate routes for redress of discriminatory housing practices, §§ 3610-13. In explaining the differences among them, White begins with the argument that ". . . Congress intended that whenever possible, age old habits of discrimination were to be broken voluntarily and at the same time, individuals suffering injury caused by specific discriminatory acts be recompensed immediately." For White this assumed congressional intent[4/]

4/ Contrary to White's assumption, however, it is quite difficult to pin down the legislative history of these provisions. See Note, Discrimination in Employment and in Housing: Private Enforcement Provisions of the Civil Rights Acts of 1964 and 1968, 82 Harv. L. Rev. 834, 863 (1969). "The Act was debated, as H.R. 2516, on the floor of the House of Representatives and passed in the wake of the assassination of the Rev. Martin Luther King. As to be expected, floor debate was more emotive

provides clear guidance as to the scope of relief that is proper under each of the three sections: § 3610 provides the procedure an individual must follow to obtain broad corrective relief from the court; § 3612 provides a more expeditious avenue for those seeking only relief "restorative and compensatory in nature"; and § 3613 allows no one but the Attorney General to seek broad corrective relief from widespread violations of the law without first going to the Secretary under § 3610.

White's arguments both attempt to read this portion of the Code (which is part of the Civil Rights Act of 1968) narrowly and restrictively. This approach is a mistake, however. In Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972), the Supreme Court was presented with an action by white residents of a segregated apartment complex complaining of the discriminatory practices of their landlord. The complainants had first approached the Secretary under § 3610 and, when he took no action, then sued in federal court. The Supreme Court took an extraordinarily broad view of the scope of the remedies and standing authorized by the 1968 Act,

4/ cont'd

clarifying." Crim v. Glover, 338 F. Supp. 823 (S.D. Ohio 1972); cf. Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 210 (1972); United States v. Hunter, 459 F.2d 205, 210-11 n.4 (4th Cir.), cert. denied, 409 U.S. 934 (1972). It is relatively clear, though, that § 3612 was meant to be a strong independent remedy, not narrowly channeled by §§ 3610, 3613. Cf. Crim v. Glover, 338 F. Supp. 823 (S.D. Ohio 1972), and cases cited therein.

concluding that "insofar as tenants of the same housing unit that is charged with discrimination are concerned," standing would be defined as broadly as permitted under Article III of the Constitution. Id. at 209. In the process of reasoning to this conclusion the Court noted that "[t]he language of the Act is broad and inclusive," id., and discussed the "important role" that private attorneys' general actions served in implementing the 1968 Act. Id. at 211.

In the instant case Fort is not now attempting to maintain a private attorney's general action;[5/] she is merely suing for injuries to herself and as the representative of an as-yet-uncertified class also sustaining injuries. In the more traditional posture of this case White's limiting arguments are even more inappropriate than they were found to be in Trafficante, for the view of standing that the Court must adopt in order to permit Fort's action is much less broad.[6/]

5/ See Transcript, June 27, 1974, at 10-12. This Court does not intimate that a private attorney's general action could be maintained here by Fort. Even Trafficante recognized that the "case or controversy" requirement of Article III demands some injury to the plaintiff. The case went no farther than the holding that those whites who were tenants of a housing complex could complain about discrimination against blacks in rentals in that complex, reasoning that those whites had lost the benefits of an integrated living environment. Whether or not Fort, as a private attorney general, would satisfy the requirements of Article III is a question that we need not and do not reach here.

6/ Section 3612 clearly allows individual private actions for relief from discriminatory practices, and the existence of the Attorney General's authority to sue under § 3613 does not

Having concluded that § 3612 should not be read narrowly, it becomes easy to dispose of White's two specific arguments, for both are fatally flawed. With respect to White's first argument, that the plaintiffs do not have standing to raise a "pattern or practice" claim, the defect is that the characterization of the facts upon which the claim is founded is not binding upon the Court. My duty is to determine whether the facts alleged state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). If the facts alleged support a claim under § 3612 it is immaterial that the plaintiffs have not couched their complaint in the statutory terms. 2A J. Moore, Federal Practice ¶ 12.08, at 2274, 2284 n.7 (2d ed. 1968). In the instant case the plaintiffs have claimed refusals to show or rent apartments based upon racial discrimination; these claims allege violations of 42 U.S.C. § 3604

6/ cont'd

impliedly exclude class actions under § 3612. Indeed, the Attorney General is empowered to seek only "preventive relief," and one who had been injured by the practices that led the Attorney General to institute his action would still have to sue under § 3612 to recover damages. It would serve no purpose to forbid all those whose injuries arose from the same nucleus of facts from joining in a class action; only judicial diseconomies would result.

No intimation is intended as to the existence of a proper class in this case. There has as yet been little evidence on the subject, and the Court defers a ruling on whether Fort's class should be certified. For the purposes of the defendant's motion to dismiss, however, it must be assumed that Fort will be able to show the existence of a certifiable class. Cf. Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 (1970); United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

(1970); violations of § 3604 are explicitly made actionable under § 3612.

With respect to White's second argument, that the Court cannot grant the broad relief the plaintiffs have requested, the flaw is that the language of § 3612 provides otherwise: "The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order . . . ." 42 U.S.C. § 3612(c) (1970). The relief to be granted is any deemed appropriate by the Court within its discretion. While the broad relief requested here may not be deemed appropriate after a hearing on the merits,[7/] the Court cannot grant a motion to dismiss based simply on the fact that this relief has been requested.

The defendant's motion to dismiss the application for a preliminary injunction is denied.

SO ORDERED.

Dated at Hartford, Connecticut, this 25th day of October, 1974.

M. Joseph Blumenfeld
M. Joseph Blumenfeld
United States District Judge

7/ Cf. Williams v. Matthews Co., 499 F.2d 819, 829 (8th Cir.), petition for cert. filed, 43 U.S.L.W. 3217 (U.S. Sept. 18, 1974) (No. 74-296).

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF CONNECTICUT

LUDDIE FORT and JAMES BOOKWALTER, for themselves and all others similarly situated,	)	
Plaintiff,	)	CIVIL ACTION No. _____
v.	)	
ROBERT C. WHITE, d/b/a ROBERT C. WHITE CO., REALTORS,	)	
Defendant.	)	
UNITED STATES OF AMERICA,	)	
Plaintiff,	)	CIVIL ACTION No. _____
v.	)	
ROBERT C. WHITE, d/b/a ROBERT C. WHITE CO.,	)	
Defendant.	)	

CONSENT DECREE

The Plaintiffs Luddie Fort and James Bookwalter filed suit against defendant on June 14, 1974, alleging violations of the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq. and the Civil Rights Act of 1866, 42 U.S.C. 1982 and moved for a preliminary injunction. That motion was heard on June 27, 1974 and denied based on the Court's holding that there was no substantial threat of irreparable harm to plaintiffs. The case was not heard on the merits. The United States has today sued the defendant in a separate action, also alleging violations of the Fair Housing Act of 1968. All plaintiffs allege that the defendant has engaged in a pattern or practice of discrimination in violation of the above-referenced Civil Rights Laws by denying and making dwellings unavailable to black persons on account of race.

The Defendant denies all material allegations of the Plaintiffs' complaints. However, in view of the costs to Defendant of litigation, and because, in any event, Defendant desires to co-operate with the Plaintiffs to improve housing opportunities for all persons without regard to race, color, religion, sex or national origin, and Defendant represents, pursuant thereto, that he has already taken some affirmative steps in this regard, the United States has agreed not to prosecute the litigation seeking determination of discrimination, and the Plaintiffs Forte and Bookwalter have agreed not to seek further injunctive relief and to pursue further litigation only for the purpose of recovering damages.

Consequently, the Court has consolidated the two cases for purposes of this Decree. Without any adjudication on the merits, and without prejudice to the plaintiffs Fort and Bookwalter to continue to pursue this litigation for the purpose of recovering damages from the defendant, the parties have consented to the entry of this Decree as indicated by the signatures affixed hereto.

I.

GENERAL

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the defendant Robert C. White, d/b/a Robert C. White Co., together with his employees and agents, and all those acting in concert or participation with any of them, be and each is hereby permanently enjoined from:

A. Failing or refusing to rent a dwelling to any person because of race, color, religion, sex or national origin, and from making a dwelling unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin.

B. Discriminating against any person in the terms, conditions, or privileges or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex or national origin.

C. Making, printing, or publishing, or causing to be made, printed, or published, any notice, statement or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex or national origin or an intention to make such preference, limitation, or discrimination.

D. Representing to any person because of race, color, religion, sex or national origin that any dwelling is not available for inspection or rental when such dwelling is in fact available.

E. Maintaining or operating the apartment buildings it manages or other dwellings in any manner by which dwellings in any building are designated for occupancy on the basis of race, color, religion, sex, or national origin or in any manner which has the purpose or effect of segregating tenants by race.

F. Steering or channeling any prospective tenant toward residence in any particular dwelling or neighborhood because of race, color, religion, sex or national origin.

G. Discriminating against any person with respect to compensation, training, terms, conditions or privileges of employment, on account of race, color, religion, sex or national origin.

INSTRUCTIONS TO EMPLOYEES

H. Within thirty (30) days of the entry of this Decree, and with new employees, within 10 days of their becoming employees, the defendant shall

conduct and complete an educational program for all employees and superintendents of apartments managed by defendant*/ to inform them of the provisions of this Decree and their duties under the Fair Housing Act of 1968 and under Title VII of the Civil Rights Act of 1964. Such program shall include:

1. Furnishing to each such employee and superintendent a copy of this Decree and of the Fair Housing Act as it applies to them.

2. Informing each such employee and superintendent, in person or by general meeting, of the provisions of this Decree and of duties of the company and its employees and superintendents under the Fair Housing Act and under Title VII of the Civil Rights Act of 1964. Each such employee and superintendent shall be advised that his failure to comply with the provisions of this Decree shall subject him to dismissal or other disciplinary action, and to sanctions for disobedience of the orders of this Court.

3. Securing a signed statement from each such employee and superintendent that he has read the letter mentioned above and received the instructions described in the preceding paragraph.

It is understood by the Court and the parties that in July, 1974, the defendant took steps to instruct employees and superintendents employed at

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*/ For purpose of this Decree, the term "employees" includes superintendents of apartments managed by defendant. For emphasis, the term "employees and superintendents" will be used.

that time of their obligations under the 1968 Fair Housing Act. A copy of a letter containing such instructions and the list of persons to whom it was sent is attached as Appendix A to this Decree. Actions taken at that time are not required to be duplicated here.

II.

AFFIRMATIVE FAIR HOUSING ACTION PLAN

IT IS FURTHER ORDERED that the defendant shall forthwith */ take the following steps to adopt and implement an affirmative program of compliance with the Fair Housing Act of 1968:

A. Notification to Community of Non-Discriminatory Policy

1. Display fair housing signs in a form approved by the Secretary of the Department of Housing and Urban Development (HUD) **/ in a prominent place in defendant's central office and in the lobby of all apartment buildings managed by defendant.

2. Notify in writing logical sources of minority housing seekers that apartments managed by the defendant are available to all qualified persons without regard to race, color, religion, sex or national origin. It is understood by the parties that the defendant will satisfy this requirement by sending the letter marked Appendix C to each of the organizations listed in Appendix D.

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*/ The defendant's obligations to implement each provision of this Order for affirmative action shall begin ten (10) days following the entry of this Order, unless otherwise specified herein.

**/ See the pertinent HUD Regulation, 37 F.R. 3429 (a copy attached hereto as Appendix B).

3. Include in all advertising in newspapers and other media, and all billboards, signs,*/ pamphlets, brochures, and other promotional literature (including maps showing apartments which defendant hands out to apartment seekers) the words "Equal Housing" or the fair housing logo. These words or the logo shall be prominently placed and easily legible. In addition, all advertising placed by defendant or his agents shall conform to the Department of Housing and Urban Development advertising guidelines, as published in 37 Fed. Reg., pp. 6700-02, on April 1, 1974. A copy of these guidelines is attached as Appendix E to this Decree.

B. Implementation of Objective Standards and Procedures

In order to assure non-discriminatory selection and assignment of tenants and to assure equal opportunity in housing at each apartment managed by defendant, the defendant shall:

1. Adopt and implement nonracial standards for receiving, processing, evaluating, and approving applications for rental of apartments (hereinafter referred to as Rental Standards). These Rental Standards shall be objective, based on past white standards, and may be changed in accordance with the spirit and letter of this Decree with a copy of any such change being sent to plaintiffs as soon as changed. A copy of such standards is attached to this Decree as Appendix F.

2. Maintain in the central rental office of the defendant a master list to be compiled on a weekly basis of each currently vacant, or available,

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*/ The sign in the front yard of the Robert C. White Co. office, 645 Farmington Avenue, which bears only the company name, will not be required to include an Equal Housing notice so long as such a notice is prominently placed in the front window of the building where another company sign is posted so as to be easily seen from the street.

apartment and each apartment expected to be vacant or available within thirty (30) days. The list shall include the style of apartment, the number of rooms, and the monthly rental.

3. Make available to each person who visits one of the apartments managed by defendant for the purpose of inquiring about apartment units in that apartment, a list to be compiled on a weekly basis of each vacant or available apartment or each apartment in that building which is expected to be vacant or available in that building within thirty (30) days. The list shall include the style of apartment, the number of rooms, and the monthly rental. */

4. Implement the following procedure to assure that those of defendant's apartments occupied 85% or more by white tenants are made available to minority applicants:

(a) Maintain a list of apartments which contain less than 15% non-white tenants. The present list is attached as Appendix G and defendant shall update this list every six months for three years.

(b) Keep available by listing on master list referred to in ¶ B2 above and on the weekly list referred to in ¶ B3 above, for a period of ten days or until at least two bona fide minority apartment seekers have been shown the apartment, each apartment unit in any apartment listed in Appendix G

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*/ For the purposes of this ¶ B3, where superintendents manage more than one building, the lists they maintain will show all vacancies in such buildings.

which is currently vacant or available or expected to be vacant or available within thirty (30) days. */ **/ ***/

(c) Provide the Greater Hartford Urban League, 1359 Albany Avenue; Housing Now, Inc., 75 Pratt; and LaCasa de Puerto Rico, 244 Albany Avenue, weekly, with a list of the units covered by this ¶ 4 that are available.

(d) The procedures set forth in this paragraph may be terminated for any apartment when occupancy in that apartment becomes 15% or more non-white.

III.

EMPLOYMENT

The defendant shall recruit, hire, and assign qualified applicants in such a manner as to assure a reasonable level of participation by qualified non-white employees in all job classifications or categories. In order to facilitate achievement of this goal of non-white participation, the defendant shall place in all advertisements for employees and on all employment application forms the words "Equal Employment Opportunity."

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*/ The plaintiffs Fort and Bookwalter proposed this provision and the defendant agreed to it. For that reason the United States has no objection to it.

**/ The institution or maintenance of summary process proceedings will not be evidence, in and of itself, of an expectation that a unit will be vacant or available within 30 days.

***/ For the purposes of this ¶, two or more individuals comprising one housekeeping unit shall be considered as one apartment seeker.

IV.

REPORTING AND RECORD KEEPING REQUIREMENTS

A. IT IS FURTHER ORDERED that sixty (60) days after the entry of this Decree defendant shall file with the Court and serve on counsel for the plaintiff United States*/ a report enumerating the preliminary steps that have been taken to implement the provisions of this Decree. This report shall consist of:

1. The steps taken to comply with Part II of this Decree.

2. Copies of all letters sent to organizations listed on Appendix D.

3. Representative copies of all advertisements placed in newspapers and other periodical publications since the entry of this Order, the name of each newspaper or publications in which the advertisement was placed, and the date of each advertisement.

4. The name, race, position, and assignment of each employee and superintendent as of the date of the entry of this Order; an assurance that the educational program required by I. H. has been conducted, and copies of all signed statements obtained in accordance with Part I. II. 3. If any employee or superintendent refuses to sign such a statement, the defendant shall include a full statement of all pertinent circumstances and of any action taken by them in relation thereto.

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*/ To minimize expense to defendant in having to prepare and submit the information in this part and part B which follows, plaintiff will provide counsel for plaintiffs Fort and Bookwalter with a copy of the information in the reports forwarded to it. Counsel for plaintiffs Fort and Bookwalter will provide access to such information to the defendant upon request.

B. IT IS FURTHER ORDERED that four (4) months after the entry of this Decree, and at four (4) month intervals for the next two (2) years, the defendant shall serve on counsel for the United States with certificate of service filed with the Court, a report containing the following information for the preceding reporting period:*/

1. The following information for each person who inquires in person at the central office and in those apartment complexes where less than 30% of the tenants are non-white, as listed in Appendix H:**/

(a) name;

(b) date;

(c) home and office phones;

(d) type apartment desired;

(e) race;

(f) apartments to which referred.

2. The name of each new tenant who rented during the reporting period.

3. A list of each vacancy that occurred during the reporting period, and the date on which each of the apartments listed was rented or otherwise committed for rental.

4. Written documentation that each new employee has received a copy of this Decree, and the other information required in Paragraph I. H., and has been instructed in accordance therewith.

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*/ Reports shall be filed no later than thirty (30) days following the last day of each reporting period.

**/ The list in Appendix H will be reviewed by defendant every six months and brought up to date if changes in racial occupancy so warrant.

5. The name, address, telephone, race, date shown an apartment, and apartment shown of all minority apartment seekers who have been shown the apartments listed in Appendix G in accordance with Paragraph II. B. 5. (b).

6. The name, race and address of each employee and superintendent hired during the preceding reporting period, the date the person was hired, and the place of assignment, and whether or not he has received the special education program and signed a statement pursuant to Part I. H.

7. The name, race and address of each person who applied for a position of employment during the preceding reporting period but was not hired, the date of application, and the reason for rejection.

8. The name, race and address of each employee and superintendent who was fired or resigned during the preceding reporting period, the date of such action, and the reasons for such action.

9. For purposes of subparagraph 1 through 8 immediately above, it will be satisfactory if actual reports containing this information are submitted.

C. IT IS FURTHER ORDERED that for a period of three (3) years following the entry of this Order, the defendant shall make, keep, and preserve any and all records*/ which are the source of or contain any of the information

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*/ The term "records" includes all papers, correspondence, applications, credit reports, offers, leases, notes, and other writings which constitute or contain information bearing on the defendant's obligations under this Order.

pertinent to the defendant's obligations to report to the Court. Representatives of the Plaintiff United States shall be permitted to inspect and copy all such records of the defendant at any and all reasonable times, provided, however, that the plaintiff shall endeavor to minimize any inconvenience to the defendant from the inspection of such records.

V.

A. If during the effective life of this order the Plaintiffs obtain information about possible violations by the Defendant, which information is brought to Plaintiffs' (or either of them) attention by an apartment seeker or any other person, the Plaintiff obtaining such information shall furnish to the other parties to this decree, in writing, the substance of its information about the alleged discrimination, including (if known to Plaintiff) the name and address of the person allegedly discriminated against and a brief description of the nature and substance of the complaint, the date and place of the alleged incident and the name of Defendant's agent or employee involved in the incident, and the names and addresses of all persons having knowledge relevant thereto. The Defendant shall have fifteen days after receipt of such information to investigate the complaint. If the complaint is determined by Defendant to be valid, the Defendant shall advise the Plaintiffs what steps have been taken to correct the conditions leading to such discriminatory act. If the complaint is determined by the Defendant to be invalid, the Defendant shall so advise the Plaintiffs of the basis for such determination. Upon expiration of said fifteen day period, the Plaintiffs (or either of them) may initiate any action which they (or either of them) deem appropriate.

If it appears that a lapse of fifteen days would effectively preclude adequate correction of the alleged discrimination, the Plaintiffs (or either of

them) may initiate appropriate action at any time after advising the Defendant in writing (including telegraphic communication) of the alleged violation.

B. Nothing in this Order shall affect rights to money damages that may have accrued to the plaintiffs Fort and Bookwalter under Title VIII of the Civil Rights Act of 1968 or 42 U.S.C. 1982.

C. In the event of a dispute arising under this decree, any of the parties may apply to the Court for direction and resolution of such dispute, upon giving reasonable notice to the other party.

D. Defendant's maintenance of racial records for the purpose of complying with this decree shall not be discriminatory.

E. No costs shall be assessed in favor of the United States against the defendant with respect to any matter predating the entry of this decree.

F. The Court retains jurisdiction of this action for all pur poses.

SIGNED AND ENTERED this _____ day of _____, 1974.

_____
UNITED STATES DISTRICT JUDGE

For Plaintiffs, Luddie Fort and James Bookwalter:

_____
BRUCE MAYOR
Attorney at Law

For Plaintiff UNITED STATES OF AMERICA:

_____
United States Attorney

CHARLES D. BENNETT, JR.
Deputy Chief, Housing Section
Civil Rights Division
Department of Justice
Washington, D.C. 20530

For Defendant, Robert C. White, d/b/a Robert C. White Company:

Appendix G

ROBERT C. WHITE COMPANY

645 FARMINGTON AVENUE • HARTFORD, CONNECTICUT, 06105 • PHONE 236-5951

December 17, 1974

BUILDINGS WITH UNDER 15% MINORITY TENANTS

	# of Units	White	Non-White	%	Vacant
30 Allen Place	27	24	3	11	
145 Barker Street	24	23	1	4	
166-176 Collins Street	52	44	6	11.5	2
704-706 Farmington Ave., W.H.	21	21	0	0	
Garden St. / Myrtle St.	113	110	3	2.7	
15-39 Dorothy Street	48	47	1	2	
30 Evergreen Ave.	25.	24	0	0	1
543-549 Prospect Ave., W.H.	9	9	0	0	
503 New Britain Ave.	26	26	0	0	
Sisson/Tremont/South Whitney	36	35	0	0	1
7 Woodland Street	40	34	5	12.5	1
16 Evergreen Ave.	24	22	1	4.1	1
22 Evergreen Ave.	33	30	3	10	
34-36 Forest St.	53	48	4	7.5	1
467-469 Farmington Ave.	9	7	1	11	1
115 South Main St., W.H.	24	24	0	0	
249 New Britain Ave.	32	28	3	10	1
Orchard Gardens, E.H.	64	61	3	4.6	
Farmington Courts	54	51	1	1.8	2
Manchester Gardens	101	97	2	1.9	2
Wethersfield Apts., Wethersfield	56	56	0	0	
Bristol Aprts.	58	54	3	5.1	1
804 Farmington Ave., W.H.	18	17	0	0	1
Cooper Hill Apts., Manchester	70	69	1	1.4	
Willowbrook Apts., New Britain	40	36	4	10	
LaSalle Terrace Apts., New Britain	28	24	3	10.7	1
West Hartford Fellowship, W.H.	100	99	0	0	1

ROBERT C. WHITE COMPANY

645 FARMINGTON AVENUE • HARTFORD, CONNECTICUT, 06105 • PHONE 236-5961

December 17, 1974

BUILDINGS WITH UNDER 20% MINORITY TENANTS

	# of Units	White	Non-White	%	Vacan
30 Allen Place	27	24	3	11	
4 Atwood Street	19	15	4	21	
145 Barker Street	24	23	1	4	
166-176 Collins Street	52	44	6	11.5	2
704-706 Farmington, W.H.	21	21	0	0	
Garden St./Myrtle St.	113	110	3	2.7	
15-39 Dorothy Street	48	47	1	2	
30 Evergreen Ave.	25	24	0	0	1
543-549 Prospect Ave., W.H.	9	9	0	0	
503 New Britain Ave.	26	26	0	0	
Sisson/Tremont/So. Whitney	36	35	0	0	1
7 Woodland St.	40	34	5	12.5	1
16 Evergreen Ave.	24	22	1	4.1	1
22 Evergreen Ave.	33	30	3	10	
235-237 Farmington Ave.	33	27	5	15.1	1
270-274 Farmington Ave.	30	25	5	16.6	
34-36 Forest St.	53	48	4	7.5	1
467-469 Farmington Ave.	9	7	1	11	1
252 Laurel St.	18	13	5	27	
270 Laurel St.	77	52	14	18	11
115 So. Main St., W.H.	24	24	0	0	
269-271 So. Marshall St.	32	22	8	25	2
76 Main St.	42	31	8	19	3
249 New Britain Ave.	32	28	3	10	1
715 Wethersfield Ave.	12	10	2	16	
Orchard Gardens, E. H.	64	61	3	4.6	
Farmington Courts	54	51	1	1.8	2
Manchester Gardens	101	97	2	1.9	2
Wethersfield Apts., Weth.	56	56	0	0	
Bristol Apts.	58	54	3	5.1	1
804 Farmington Ave., W.H.	18	17	0	0	1
Cooper Hill Apts., Manch.	70	69	1	1.4	
Willowbrook Apts., N. Brit.	40	36	4	10	
LaSalle Terrace Apt., N. Brit.	28	24	3	10.7	1
West Hartford, Fellowship, W.H.	100	99	0	0	1

FILED

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LUDDIE FORT, for herself and for all those similarly situated, ET AL	:	
v.	:	CIVIL NO. H-74-389
ROBERT C. WHITE d/b/a ROBERT C. WHITE CO., REALTORS	:	

MEMORANDUM OF DECISION

This suit was originally brought as a class action against Robert C. White, doing business as Robert C. White Co. (together referred to herein as the defendant White). White is a local realtor who manages approximately 1500 apartment units in the greater Hartford area. The suit complained of alleged racial discrimination in the rental of apartment units by White against Fort, a black, and others similarly situated. Plaintiff Bookwalter, a white, is a tenant in a building managed by White and complained on behalf of all others similarly situated of the loss of the benefits of interracial housing caused by White's alleged discrimination. Cf. Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972). The plaintiffs invoked the jurisdiction of this court pursuant to 28 U.S.C. §§ 1983(3)-(4) (1970) and 42 U.S.C. § 3612(a) (1970) to secure relief from conduct made illegal by 42 U.S.C. §§ 1982, 3604 (1970). The relief sought included a declaratory judgment of the illegality of the conduct of White and

his agents, a permanent injunction[1/] against such illegal conduct and in favor of a plan of affirmative action, actual and punitive damages, and reasonable costs and attorney's fees. The case was set down for a trial on the merits on December 17, 1974.

On the day scheduled for the trial the United States filed suit against White pursuant to 42 U.S.C. § 3613 (1970), also alleging violations of the fair housing laws, 42 U.S.C. §§ 3601-31 (1970). In settlement of that suit White entered into a consent decree (that recognized that White did not admit any of the charges of wrongdoing leveled against him) enjoining him and his agents from racially discriminatory practices and requiring him to undertake an affirmative action plan. United States v. White, Civ. No. H-74-392 (D. Conn. Dec. 18, 1974). The plaintiffs Fort and Bookwalter joined in this decree, agreeing not to press their claims for injunctive relief. In chambers their attorney also represented to the court that they were no longer seeking certification of their suit as a class action. At the commencement of the trial of the plaintiffs' case, their counsel represented in open court

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1/ The plaintiffs also sought a preliminary injunction. At a hearing held on June 27, 1974, the court denied that application based on a finding that the plaintiffs faced no irreparable injury by reason of the defendant's conduct. The evidence presented at that hearing showed that "the practice complained of, whether it existed or not, is being amply safeguarded against any possible continuance." Excerpt of Transcript (June 27, 1974) 11.

that compensatory damages were not being sought.[2/] Although not explicitly disclaimed, the request for a declaratory judgment has not been pressed and will also be considered abandoned. Remaining in the case, therefore, are claims by Fort and Bookwalter individually seeking punitive damages, costs, and attorney's fees.

I.

At the trial on the merits plaintiff Fort's testimony at the prior hearing on an application for a preliminary injunction was incorporated by reference. That testimony

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2/ White's posttrial brief argues that a failure to claim any actual damages precludes the plaintiffs from seeking punitive damages. Perhaps to forestall such an attack, the plaintiffs' posttrial brief asserts that compensatory damages are here sought (but then discusses and asks for only punitive damages). This, in turn, leads the defendant's counsel to protest that the plaintiffs' counsel is attempting to renege on the representation he made in open court.

Although it may have been confusing to the defendant's counsel, the court understood the representation made for the plaintiffs by Mr. Mayor. He seeks monetary relief for his clients only on a punitive theory. To get such a recovery it is necessary to show the defendant's liability (which would allow recovery of actual damages if any were proven). Mr. Mayor's representation meant simply that he did not plan to prove actual damage to the plaintiffs. Perhaps it would have been clearer to state that the plaintiffs sought only nominal damages plus punitive damages. However, the defendant cannot really claim to be surprised by the statements in the plaintiffs' posttrial brief. His counsel put on a full factual defense at trial, and thus White was not prejudiced by his counsel's misapprehension of Mr. Mayor's remarks (as he might have been if he had put on no defense, in actual reliance on his impression of Mr. Mayor's representations).

showed that on April 29, 1974, Fort called the superintendent at 169 Collins St. in Hartford, a White-managed building, and asked if there were any one-bedroom apartments available for about $160 per month. The superintendent, Mr. Bedard, said that an apartment fitting her specifications was then occupied by a law student who would be vacating soon. Bedard said that she could view the apartment on the morning of April 30. When she arrived at 166 Collins St. accompanied by Evelyn Nichols, who is also black, on April 30 she met with Bedard, who denied having talked to her on the telephone. Fort and Nichols left the building and, after discussing what had happened, decided to organize "tests" of the building and others managed by White to determine whether they used racially discriminatory rental practices. The evidence presented by the testers is best understood if broken down by location.

A. 166-176 Collins St.

Donna Fatsi testified that she and Carol Anastasio, both white, visited the two-building complex at 166-176 Collins St. on May 1. They asked Bedard, the superintendent, if any one-bedroom apartments were available. Bedard said that one was available and volunteered that a two-bedroom was also available. Fatsi and Anastasio were shown an apartment which was occupied by a law student who was planning to vacate by June 1. When Fatsi asked about another apartment building she saw over the parking lot in back of the Collins St. apartments, Bedard said that it had black tenants and crime

problems. He emphasized that the Collins St. buildings were "very secure," however.

Mary Soares testified that later on May 1 she and another black, Cheryl Jordan, approached the Collins St. buildings to test them. Mr. Bedard, who was sweeping the sidewalk, blocked their entrance and asked what they wanted. They said that they wanted an apartment. Without even asking what type of apartment they were interested in, Bedard said that none would be available until October.

Wendy Hinds testified that she and Gale Smith, both white, had gone to Collins St. on May 3. Bedard showed them one apartment and told them that three others would also be available at the end of the month.

L ter on May 3, Adrienne Dukes and Chester Smith, both black, testified that they went to Collins St. Bedard told them that there were no vacancies. Dukes said that she had been referred to Collins St. by White's office (and testified that she had been told by White's office on the telephone that there was a vacancy at Collins St.), but Bedard still said there were no vacancies. After several repetitions of this conversation, Bedard allowed that although there were no current vacancies there would be one at the end of the month. Dukes and Smith did not request to see and were not shown an apartment.

Still later on May 3, Astrida Olds te ifie that she and Boyd Hines, both white, tested Collins St. Bedard showed

them an apartment and told them that another would be available in a month. When asked what kind of a neighborhood Collins St. was, Bedard said that it was a fine place because there were no blacks. He said that blacks were not allowed in 166-176 Collins St.: the White office did not send black prospective tenants there; if any blacks inquired directly they were told that there were no vacancies.

B. 69-79 Myrtle St. and 98 Garden St.

Wendy Hinds testified that she and her husband Boyd, who are both white, tested this complex in the morning of May 20. They first met Ms. LaCroix, the superintendent's wife, and told her they were interested in an apartment for Mr. Hinds' mother. Ms. LaCroix showed them an apartment in the Garden St. building and told them that there were no blacks in the building. She said that she tried not to rent to blacks and that the Garden St. building was "secure." The Hindses then met Mr. LaCroix, who showed them an apartment in one of the Myrtle St. buildings. Mr. LaCroix also indicated that there were no blacks or members of other minority groups in occupancy. He said that the complex had been able to get around integration for five years by not advertising.

Later in the morning of May 20, plaintiff Fort testified that she and Michael Borders, who is also black, went to Mr. LaCroix's office in the Garden St. building to inquire about available apartments. LaCroix told them that none were available.

In the afternoon of the same day, Boyd Hines returned to the complex with Thelma Caruso, who is also white. Ms. Caruso testified that they were shown a fifth-floor apartment in the Garden St. building.

C. 7 Woodland St.

Around 9:30 a.m. on May 22, Wendy Hines testified that she and Susan Getman, also white, went to the building at 7 Woodland St., a White-managed apartment house. There they were shown an apartment by someone who said that Mr. Waller, the superintendent, was away and referred them to the White office for further information.

Around noon on May 23 Kathleen Malcolm and Chester Smith, both black, testified that they went to 7 Woodland St. After encountering several elderly tenants in the hall, they found Waller, who showed them an apartment. According to Malcolm, Waller told them that the apartment was for elderly people and that the building "wasn't a jumping joint." He referred them to the White office to check its availability. There is testimony by Waller that Malcolm was very rude and upset the elderly tenants; he called the White office to say so. Malcolm and C. Smith deny that Malcolm was rude or that any tenants seemed upset.

D. The White Office

Donna Fatsi testified that on May 20 she and Joseph Zanghi, both white, visited White's office. There they talked to Joyce Lazich, whom they asked about apartments suitable for

Fatsi's mother; they said that her requirements were flexible but that they were most interested in one-bedrooms that cost around $150 to $175 per month in the Hartford area, preferably close to the offices of the Connecticut Mutual Life Insurance Co. (on Garden St.). Lazich gave them about seven or eight addresses, including those of the Collins St. and Myrtle/Garden Sts. complexes. Lazich thinks she did not tell Fatsi about the Woodland St. building (because she does not think she was aware of a vacancy there when she talked to Fatsi); Fatsi thinks she was given the Woodland St. address.

Later on May 20, Chester Smith testified that he and Cheryl Jordan, also black, tested the White office. He did not say what vacancies they were told of; he did testify that they were not told of vacancies at the Collins and Myrtle/Garden Sts. complexes or at 7 Woodland St. Lazich testified that they would have been told about the vacancies at Collins St. if they had been looking for a two-bedroom or an efficiency apartment and about the Myrtle/Garden Sts. vacancies if they had asked about that area. As in the case of Fatsi's visit, Lazich did not recall knowing about a Woodland St. vacancy when C. Smith and Jordan inquired at the White office.

Wendy Hinds testified that on May 23 she and Mary Bracket, also white, went to the White office at about 10 a.m. to check on the availability of the Woodland St. apartment Hinds and Getman had been shown by Waller. Lazich said that there was a vacancy at 7 Woodland St. and also recommended apartments at three other locations.

Shortly after noon on May 23 Malcolm and C. Smith arrived from 7 Woodland St. to check on the availability of the apartment Waller had showed them. A woman in White's office told them that it was the lunch hour and that they should return at 1 p.m. They did so and saw Lazich, who told Malcolm (while Smith waited, out of earshot, in the hallway) that the apartment was on "hold" for someone until the following Tuesday. According to Lazich's testimony, this "someone" was Mary Bracket. Although Ms. Hinds had not put down a deposit, Lazich decided to put a "hold" on the apartment because she thought that Ms. Bracket would fit in well at Woodland St. (Robert Cross, White's property manager for all the buildings in question, testified that the majority of tenants at Woodland St. are elderly and that some younger tenants had been unhappy there because of their less sedate lifestyles. Ms. Malcolm appears to be some years younger than Ms. Bracket.) Furthermore, Lazich testified that by the time she talked to Malcolm she had received Waller's report of Malcolm's visit and had also been told by the woman in White's office who had seen Malcolm at noon that Malcolm had been disruptive. Lazich did not think Ms. Malcolm disruptive when she spoke to her, however. Both Malcolm and Lazich testified that Lazich gave Malcolm an application to fill out for tenancy in White's buildings; Lazich also testified that she told Ms. Malcolm that if the Woodland St. vacancy had not been rented by the following Tuesday it would be back on the market.

At about 2 p.m. Ms. Hinds returned, accompanied by Astrida Olds, to confirm that the Woodland St. apartment was still available. Lazich said it was and mentioned that some people had just inquired about it who would not fit in at Woodland St. Lazich's testimony confirms this story and indicates that her reference was to Malcolm and C. Smith. Apparently Lazich did not tell Ms. Hinds that she had placed the apartment on "hold" for Bracket.

Some additional testimony is also worth reciting. First, Robert White testified at the trial on the merits, without cross-examination, that prior to institution of this suit he had no knowledge or policy of racial discrimination in buildings managed by his company. Robert Cross, White's property manager for these buildings, testified similarly. Second, White testified at the hearing on the application for a preliminary injunction that several months before any of the actions complained of in this case he sent to all his superintendents a letter, which was received into evidence at that time, explaining and mandating compliance with his policy of nondiscrimination. After this suit was begun he sent a strongly worded letter, which was also put into evidence, to each superintendent stating White's policy of nondiscrimination. With that letter were a copy of the fair housing title of the 1968 Civil Rights Act, 42 U.S.C. §§ 3601-31 (1970), and a poster stating that discrimination in housing is illegal and giving the address of the federal official responsible for

enforcement of the fair housing laws. Each superintendent was required to sign a pledge to comply with the fair housing laws and to hang the fair housing poster prominently within his apartment building. White testified that he also planned to use his own testers to insure that these directives were being complied with. Cross testified that the superintendents Bedard and LaCroix, both of whom are over 70, were relieved of all responsibility for showing or renting apartments after this suit was filed. This is supported by White's testimony at the hearing on the application for a preliminary injunction. In September LaCroix was terminated. Before the suit was filed Bedard had shown the apartments at Collins St. and had sometimes taken a deposit (thereby putting a "hold" on the apartment) before referring the prospective tenant to the White office. LaCroix had apparently had an even freer hand at the Myrtle/Garden Sts. complex, which had a very low turnover rate. All of the vacancies were filled from LaCroix's own waiting list, which apparently consisted largely of friends of present tenants who wanted to move in. Lazich's testimony confirms that LaCroix was effectively the rental agent for this complex; she said that she never recommended this complex to a prospective tenant unless she received a specific inquiry about it.

Third, Cross and Lazich gave the following testimony about tenancy at the buildings in question:

The Collins St. complex exhibited low turnover. Although there has been some advertising of it, most of the

vacancies are filled by word-of-mouth recommendations at St. Francis Hospital, which is in the vicinity. As of early May 1974 about 5-10% of the 50 units in the complex were occupied by nonwhites. As of May 31, 4 of the 42 tenants at 166 Collins St. were nonwhite (2 black, 1 Spanish-surname, 1 Oriental). None of the 13 tenants at 176 Collins were nonwhite. As of December 17, 1974, 6 of the 55 tenants in the complex were nonwhite.

At the Garden St. and Myrtle St. buildings, which White has managed since 1969, there has never been more than a 1% vacancy rate. Probably no more than 8 to 10 apartments per year have changed hands in the whole complex. Those that did change hands did so through LaCroix's waiting list; White never had to advertise these vacancies. As of May 31, 1974, none of the 113 tenants in this complex were nonwhite, and Cross could not remember that there had ever been any nonwhite tenants in these buildings. Lazich testified that there had been some tenant changes in March through mid-June of 1974. In most of these cases the incoming tenant was either a friend of a present tenant or a tenant of another White-managed building. In one case a black woman was planning to move in, but her daughter decided to join her and they went to 176 Collins St. in order to have more room. As of December 17, 1974; 3 of the 113 tenants were nonwhite.

The Woodland St. building, like others around it, houses primarily elderly people. It too has shown a low turnover rate during the 10 years or so that it has been managed

by White, with never more than 2 units at once vacant for over a month. As of May 31, 1974, 4 of the 40 tenants were non-white (1 black, 3 Spanish-surname). From March to May there was but one tenant change. As of December 17, 1974, 5 of the 40 tenants were nonwhite.

II.

Because this suit is no longer maintained as a class action, the only injury which may be complained of is that as to which these plaintiffs Fort and Bookwalter have standing. The only injury Fort alleges is that which she suffered at the hands of Mr. Bedard at the Collins St. complex. Bookwalter resides in the same complex, and may only complain of the loss of the benefits of interracial housing there. Any further extension of their right to sue would violate even the broad guidelines of Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972), and would result in a suit that did not present an actual case or controversy as required by Article III of the Constitution. The practices at other White-managed buildings simply have no judicially cognizable impact upon either of these plaintiffs. This is not, however, to say that they are irrelevant. Especially as to the question of punitive damages, which is the main question here, the practices in other White-managed buildings are quite relevant, as will appear below.

III.

On the basis of the extensive review of the evidence presented above, the court finds that racially discriminatory rental practices were employed at the Collins St. complex. In particular, it is found that Bedard's conduct violated 42 U.S.C. §§ 3604(a), (d) (1970):

> "it shall be unlawful--
>
> "(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin. . . .
>
> "(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available. . . ."

The evidence establishes that Bedard refused on the basis of race to negotiate with Fort and Nichols, Soares and Jordan, and Dukes and C. Smith (all black) although he was willing to negotiate with Mr. Hinds and Olds, Ms. Hinds and C. Smith, and Fatsi and Anastasio (all white). The evidence further shows that Bedard, on the basis of race, represented that no apartment was available for inspection or rental to Soares and Jordan and Dukes and C. Smith although showing an apartment to Mr. Hinds and Olds, Ms. Hinds and G. Smith, and Fatsi and Anastasio. This action by Bedard renders his employer White liable for actual damages suffered by the plaintiffs. See

United States v. Youritan Constr. Co., 370 F. Supp. 643, 649 (N.D. Cal. 1973); Sanborn v. Wagner, 354 F. Supp. 291, 295 (D. Md. 1973); Williamson v. Hampton Management Co., 339 F. Supp. 1146, 1149 (N.D. Ill. 1972). Because they have not attempted to show actual damages Fort and Bookwalter are entitled to collect only nominal damages, hereby set as one dollar each, from White. Whether or not they are also entitled to collect punitive damages, costs, and attorney's fees must be further considered.

Punitive damages are normally awarded "only in cases of malicious actions in gross disregard of a plaintiff's rights." United States ex rel. Motley v. Rundle, 340 F. Supp. 807, 811 (E.D. Pa. 1972). The cases under 42 U.S.C. §§ 1982, 3612 (1970) are in accord; courts speak of "wanton and willful" conduct as a test for awarding punitive damages in these actions. See Jeanty v. McKey & Poague, Inc., 496 F.2d 1119, 1121 (7th Cir. 1974); Seaton v. Sky Realty Co., 491 F.2d 634, 638 (7th Cir. 1974); Steele v. Title Realty Co., 478 F.2d 380, 384 (10th Cir. 1973); Stevens v. Dobs, Inc., 373 F. Supp. 618, 623 (E.D. N.C. 1974); Tillman v. Wheaton-Haven Recreation Ass'n, Inc. 367 F. Supp. 860, 864 (D. Md. 1973); Wright v. Kaine Realty, 352 F. Supp. 222, 223 (N.D. Ill. 1972). Another purpose is also sometimes given for the award of punitive damages--their "deterrent impact." Sostre v. McGinnis, 442 F.2d 178, 205 (2d Cir. 1971), cert. denied, 404 U.S. 1049 (1972).

Here the purpose of awarding punitive damages to achieve deterrence is not served, for the consent decree signed by White assures that he will act in a nondiscriminatory fashion in the future (or be subject to a citation for contempt of court). The deterrent effect on others is not, standing by itself, a sufficient basis for an award of punitive damages in this case. Nor is an award of punitive damages justified under the "wanton and willful" standard. The doctrine of respondeat superior does not make an employer liable in punitive damages for the actions of his employee. The employer himself must be shown to have acted or failed to act to prevent known or wilfully disregarded actions of his employee in order to be liable in punitive damages. See Williams v. Vincent, ___ F.2d ___ (2d Cir. 1974); Johnson v. Glick, 481 F.2d 1028, 1034 (2d Cir.), cert. denied, 414 U.S. 1033 (1973).[3/] Such showings have not been made in this case.

As the review of the evidence above shows, the superintendents at the Colling St. (Pedard) and Myrtle/Garden Sts. (LaCroix) complexes showed and rented apartments in a racially discriminatory manner. There is no evidence that anyone else in White's organization knew that this discrimination was going on. Perhaps Lazich and Cross could have discovered this

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3/ Although these decisions consider the applicability of the doctrine of respondeat superior to actions under 42 U.S.C. § 1983 (1970), it is not inapplicable here. See Steele v. Title Realty Co., 478 F.2d 380, 384 (10th Cir. 1973) (§ 3612); Hollins v. Kraas, 369 F. Supp. 1355, 1358 (N.D. Ill. 1973) (§ 1982).

discrimination had they tried, especially at the Myrtle/Garden Sts. complex, where the occupancy statistics strongly warn of discrimination, see p. 12 supra. However, the White office did not keep occupancy statistics showing race, and largely ignored the complex altogether because it ran so smoothly. See p. 11 supra; cf. United States v. Youritan Constr. Co., 370 F. Supp. 643 (N.D. Cal. 1973). Punitive damages cannot be predicated purely on this sort of carelessness or, at worst, insensitivity.

As there is no evidence that anyone else knew of Bedard's and LaCroix's actions, so there is no evidence that anyone else in White's company had similar policies. The only other White-managed building as to which evidence was presented was 7 Woodland St. This evidence was extensive, revolving primarily around the conduct of Ms. Malcolm in her apartment hunting. Lazich placed the Woodland St. apartment on "hold" for the first people to inquire about it (Hinds and Bracket). She testified that she did this fairly often when she thought that the person inquiring would fit in well. In this instance she thought that the prospective tenant (Mr. Bracket) sounded perfect for Woodland St., which was occupied primarily by elderly tenants. Lazich also testified that Ms. Malcolm was told that the apartment would be back on the market the following Tuesday if Bracket did not rent it, although she conceded that she did not think that Ms. Malcolm would fit in there. Both sides agreed that the superintendent at

Woodland St., Waller, showed an apartment to Malcolm and C. Smith. At most it appears that Ms. Malcolm's personality conflicted with those of some employees and tenants of White's; there is no evidence of discrimination against her because of her race. Cf. Hamilton v. Miller, 477 F.2d 908 (10th Cir. 1973). Other evidence about 7 Woodland St. is consistent with such a conclusion. For instance, Dukes and C. Smith, who are both black, testified that someone at the White office referred them by telephone to the Woodland St. building. This probably would not have occurred if White's office practiced racial discrimination and if the person to whom they spoke could guess from their voices that they were black. Even if their race could not be determined over the telephone, it would have been more consistent with a policy of not channeling blacks to Woodland St. for the White office to refuse to make referrals over the telephone. Cf. Steele v. Title Realty Co., 478 F.2d 3[illegible] (10th Cir. 1973). Even more importantly, the evidence showed that 10% of the tenants at 7 Woodland St. were nonwhite as of May 31, 1974, a figure higher than that for the complexes managed by Bedard and LaCroix and not so low as to raise suspicion that it was achieved through racial discrimination. The evidence is that the racially discriminatory practices of Bedard and LaCroix were unique in and undiscovered by White's company. In such circumstances an award of punitive damages against White is unjustified.

IV.

It is within this court's power, both under its general equity jurisdiction with respect to the § 1982 claim, see Bradley v. School Bd., 416 U.S. 696, 706-708, 721 (1974),[4/] and under the authority of § 3612(c),[5/] to award the plaintiffs here reasonable attorney's fees. "Although the traditional American rule ordinarily disfavors the allowance of attorneys' fees in the absence of statutory or contractual authorization, federal courts, in the exercise of their equitable powers, may award attorneys' fees when the interests of justice so require. . . ." Hall v. Cole, 412 U.S. 1, 4-5 (1973) (footnotes omitted). Federal courts have exercised this discretion when the losing party has been unreasonably obdurate, see Stolberg v. Members of the Bd. of Trustees, 474 F.2d 485, 490 (2d Cir. 1973). And when the plaintiff's

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4/ The Second Circuit, in the context of a suit under 42 U.S.C. § 1983 (1970), left open the possibility that Bradley might be so construed. See Bridgeport Guardians, Inc. v. Members of the Bridgeport Civil Serv. Comm'n, 497 F.2d 1113, 1115 n.2 (2d Cir. 1974); cf. Northcross v. Board of Educ., 412 U.S. 427, 429 n.2 (1973).

5/ Section 3612(c) requires that the plaintiff not be financially able to assume the attorney's fee. This does not limit the relief available under § 1982, however. See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 416-417 & n.20 (1968); Wright v. Kaine Realty, 352 F. Supp. 222, 223 (N.D. Ill. 1972). Thus Fort and Bookwalter may recover attorney's fees and costs under § 1982, if otherwise appropriate, no matter how financially well off they are. As to the appropriateness of such recoveries, see note 10, infra.

suit has created a fund for the benefit of a class, see Bradley v. School Bd., 416 U.S. 696, 706 n.8 (1974). And when the plaintiff has accomplished something as a "private attorney general" for a group larger than himself, see Knight v. Auciello, 453 F.2d 852 (1st Cir. 1972); Lee v. Southern Home Sites Corp., 444 F.2d 143 (5th Cir. 1971.[6/]

In some cases, however, the Supreme Court has sharply limited lower courts' discretion to deny recovery of attorneys' fees to prevailing plaintiffs. In Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968), the Court construed § 204(b) of the Civil Rights Act of 1964, which authorizes awards of attorneys' fees in suits to enjoin racial discrimination in public accommodations under Title II of that Act:[7/]

> "When the Civil Rights Act of 1964 was passed, it was evident that enforcement would prove difficult and that the Nation would have to rely in part upon private litigation as a means of securing broad compliance with the law. A Title II suit is thus private in form

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6/ It remains unclear whether this ground is approved in the Supreme Court, see Hall v. Cole, 412 U.S. 1, 5-6 n.7 (1973), or in the Second Circuit. However, the Second Circuit has recently cited with approval cases awarding fees on this rationale. See Class v. Norton, 505 F.2d 123, 127 n.1 (1974).

7/ 42 U.S.C. § 2000a-3(b) (1970) provides:

> "In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person."

only. When a plaintiff brings an action under that Title, he cannot recover damages. If he obtains an injunction, he does so not for himself alone but also as a 'private attorney general,' vindicating a policy that Congress considered of the highest priority. If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts. Congress therefore enacted the provision for counsel fees--not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II.

"It follows that one who succeeds in obtaining an injunction under that Title should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust. . . ."

390 U.S. at 401-402 (footnotes omitted). Similarly, Northcross v. Board of Educ., 412 U.S. 427 (1973), construed § 718 of the Emergency School Act of 1972, 20 U.S.C. § 1617 (Supp. II, 1972), which allows an award of attorney's fees to a plaintiff, other than the United States, who has successfully sued to stop racial discrimination in a school:

"Section 718 tracks the wording of § 204(b) of the Civil Rights Act of 1964 . . . . In Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968), we held that, under § 204(b), 'one who succeeds in obtaining an injunction under that Title should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.' Id., at 402. The similarity of language in § 718 and § 204(b) is, of course, a strong indication that the two statutes should be interpreted pari passu. Moreover, 'the two provisions share a common raison d'être. The

> plaintiffs in school cases are "private attorneys general" vindicating national policy in the same sense as are plaintiffs in Title II actions. The enactment of both provisions was for the same purpose--"to encourage individuals injured by racial discrimination to seek judicial relief . . . ." Johnson v. Combs, 471 F.2d 84, 86 (CA5 1972), quoting Newman v. Piggie Park Enterprises, Inc., supra, at 402. We therefore conclude that, as with § 204(b), if other requirements of § 718 are satisfied, the successful plaintiff 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.' 390 U.S., at 402. . . ."

412 U.S. at 428.

The first issue that must be faced, therefore, is whether this court has a diminished degree of discretion in awarding attorney's fees in this case because the logic of Newman and Northcross is controlling. There is a fair amount of authority for the proposition that Newman and Northcross govern claims for attorneys' fees in housing discrimination cases. In Tillman v. Wheaton-Haven Recreation Ass'n, Inc., 367 F. Supp. 860, 866-867 (D. Md. 1973), the court applied the Newman test to a suit for damages under § 1982. It found that "special circumstances" militated against an award of fees in the case before it, however. One of these circumstances was that under § 1982 damages are available and provide more incentive to a plaintiff to sue than he has under Title II of the Civil Rights Act of 1964. In a footnote, the court says that if damages have not been incurred or cannot be proven the Newman rule should apply.[8/] In Jeanty v. McKey &

8/ Because the court already purports to be applying the Newman rule, I take it that this footnote means that no "special circumstances" should be found that will prevent the recovery of attorneys' fees.

Poague, Inc., 496 F.2d 1119, 1121 (7th Cir. 1974), and Stevens v. Dobs, Inc., 373 F. Supp. 618, 620-621 (E.D. N.C. 1974), the Newman rule was held to apply to claims for attorneys' fees under § 3612(c).

Notwithstanding this collection of authority, I cannot agree that Newman and Northcross are apposite here. The rationale of those cases is to encourage private litigants injured by racial discrimination to seek relief in federal court. It was thought that few would do so if only injunctive relief were available; an injured party would have to spend money in order to sue to achieve a remedy that could not compensate him for the injuries he had received. As a practical matter, American blacks simply could not challenge discrimination effectively on those terms, and it was thought necessary to encourage attorneys to sue on their behalf. Out of this concern grew Newman and Northcross. In the present case, however, such a concern is inapposite. Persons who have been discriminated against will be enticed into court by the recoveries available under § 1982 and § 3612--actual and punitive damages plus costs and attorneys' fees in proper cases. Their counsel will not find it unprofitable to represent them without a presumption that attorneys' fees will be awarded; there may be damage recoveries from which counsel may be paid in any event. In sum, bringing suit under § 1982 or § 3612 will be as attractive as bringing a personal injury case; the courts need not fear that parties and their counsel will be loathe

to accept the opportunity.[9/] Thus there is no justification for extending the Newman-Northcross rule limiting a court's discretion to deny attorneys' fees to suits based on § 1982 and § 3612, and I decline to do so.

Having concluded that the court's discretion is not bounded by a presumption in favor of attorneys' fees under the Newman-Northcross rule, it is appropriate to examine the other side of the coin as well: is my discretion bounded by the presumption against attorneys' fees under the "traditional American rule"? It would seem not to be so bounded--as Hall v. Cole pointed out, "the traditional American rule ordinarily

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9/ This confidence may seem undermined by the result in this case--no damages and no attorney's fees although the defendant is found liable. It might be contended that, given such a result, litigants and attorneys will indeed be wary of bringing suits under the fair housing laws. However, the result here is not due to the legal principles enunciated but to the theory on which plaintiffs' counsel proceeded. He has not asked for any actual damages beyond the nominal damages awarded and has concentrated solely on obtaining punitive damages. It is hardly clear that actual damages were unavailable, however. As the Supreme Court has recently noted, damage actions under § 3612 are "analogous to a number of tort actions recognized at common law," citing a statement in C. Gregory & H. Kalven, Cases and Materials on Torts 961 (2d ed. 1969) "that 'under the logic of the common law development of a law of insult and indignity, racial discrimination might be treated as a dignitary tort.'" Curtis v. Loether, 415 U.S. 189, 195-196 & n.10 (1974). Thus a number of courts have awarded damages for the mental anguish and humiliation suffered by one who is discriminated against on account of race. See Jeanty v. McKey & Poague, Inc., 496 F.2d 1119, 1121 (7th Cir. 1974); Seaton v. Sky Realty Co., 491 F.2d 634, 636-638 (7th Cir. 1974); Steele v. Title Realty Co., 478 F.2d 380, 384 (10th Cir. 1973); Stevens v. Dobs, Inc., 373 F. Supp. 618, 622 (E.D. N.C. 1974); Tillman v. Wheaton-Haven Recreation Ass'n, Inc., 367 F. Supp. 860, 864 (D. Md. 1973). It is entirely possible that such a recovery could have been obtained here as well.

disfavors the allowance of attorneys' fees in the absence of statutory . . . authorization." 412 U.S. at 4 (footnotes omitted) (emphasis added). In this case there is a statute, § 3612(c), that provides for the discretionary award of attorneys' fees where the plaintiffs cannot assume them. Thus neither of the presumptions discussed above seems to be applicable to the claim under § 3612, leaving me free to balance the equities involved in this case.[10/]

10/ The same cannot be said of the portion of the case based on § 1982, for there is no statutory authorization for the allowance of attorneys' fees in suits under that statute. Therefore the traditional rule applies, and I must consider whether this case falls within any exception to its presumption against the award of fees, see pp. 19-20 supra.

There is no exception that covers this case. White has not been obdurate or unreasonable in any way; compare Stolberg v. Members of the Bd. of Trustees, 474 F.2d 485, 490 (2d Cir. 1973). Indeed he has been most cooperative and concerned about halting the racial discrimination found, see pp. 10-11 supra. Nor has a fund or common benefit been created; compare the cases cited in Bradley v. School Bd., 416 U.S. 696, 706 n.8 (1974). Nor have the plaintiffs acted as private attorneys general, achieving a result that aids a class broader than themselves; compare, e.g., Knight v. Auciello, 453 F.2d 852 (1st Cir. 1972). This last ground, assuming that it is properly considered by a court in this Circuit, see note 6 supra, would have been applicable had Fort and Bookwalter sought and obtained the injunctive and declaratory relief they originally claimed. The United States brought suit and obtained a consent decree before this action went to trial, however, see p. 2 supra, and the trial dealt solely with the issue of damages. Thus it is not appropriate to award damages on the basis of the private attorney general theory in this case. Cf. Wechsler v. Southeastern Properties, Inc., 506 F.2d 631 (2d Cir. 1974). I do not need to decide whether an award on this theory could ever be justified by the argument (which the plaintiffs have not tried to make here) that the United States became involved only because of a plaintiff's efforts. See also Education/Instruccion v. Moore, ___ F. Supp. ___ (D. Conn. 1975) (Clarie, C.J.). It is appropriate merely to say that if such a claim were to

One equity is found in the relative abilities of the parties to pay for the plaintiffs' counsel. The basis of this equity is in the statute itself, for § 3612(c) requires that the plaintiffs not be able to assume the costs of counsel as a condition for recovery of attorney's fees. Cf. Stevens v. Dobs, Inc., 373 F. Supp. 618, 621 (E.D. N.C. 1974); Tillman v. Wheaton-Haven Recreation Ass'n, Inc., 367 F. Supp. 860, 867 (D. Md. 1973). Thus, in all § 3612 cases in which the defendant is a healthy company, this equity will weigh in the plaintiffs' favor. The question therefore becomes whether or not the plaintiffs are able to assume the cost of their counsel; if they cannot the statute allows the recovery of this amount and the equity based on relative ability to pay weighs in their favor. Little evidence has been introduced on this issue. However, it may be assumed arguendo that the plaintiffs are entitled to have this equity weighed on their side of the balance; there is, nevertheless, an overriding equity in the defendant's favor. This equity is found in the degree of wrongfulness of the defendant's conduct, cf. Hall v. Cole, 412 U.S. 1, 5 (1973). Where, as here, the defendant's liability is based entirely on unauthorized actions of his employees attributed to him through the doctrine of respondeat superior, there is so little

10/ cont'd

succeed it would more likely be founded on 42 U.S.C. § 3610 (1970) (under which an aggrieved person complains to the Justice Department and can sue only if the Justice Department does not resolve the complaint) than on § 3612 (which provides for no notice to the government before the action is filed).

culpability as to make an award of attorney's fees unjust. Therefore the plaintiffs' request for attorney's fees is denied. Costs are awarded to the plaintiffs, however. It is

SO ORDERED.

Dated at Hartford, Connecticut, this 13th day of March, 1975.

M. Joseph Blumenfeld

M. Joseph Blumenfeld
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LUDDIE FORT, for herself and for all those similarly situated, ET AL	:	
V.	:	CIVIL NO. H-74-139
ROBERT C. WHITE d/b/a ROBERT C. WHITE CO., REALTORS	:	

MOTION FOR AMENDED FINDINGS

Come now the Plaintiffs and pursuant to Rule 52(b) of the Federal Rules of Civil Procedure move the Court to amend the findings contained in the opinion of the Court filed herein on March 13, 1975 as follows:

1. By deleting the following language from Page 13 of its decision:

"For instance, Dukes and C. Smith, who are both black, testified that someone at the White office referred them by telephone to the Woodland St. building. This probably would not have occurred if White's office practiced racial discrimination and if the person to whom they spoke could guess from their voices that they were black. Even if their race could not be determined over the telephone, it would have been more consistent with a policy of not channeling blacks to Woodland St. for the White office to refuse to make referrals over the telephone. Cf. Steele v. Title Realty Co., 478 F.2d 380 (10th Cir. 1973."

because neither Dukes nor C. Smith so testified.

PLAINTIFFS,

65

BY _____

Bruce Mayor
Their Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion was mailed, postage prepaid, to Arnold Buchman, Esquire, 101 Pearl Street, Hartford, Connecticut 06103, on the 18th day of March, 1975.

Bruce Mayor

FILED

MAR 27 8 15 AM '75

U. S. DISTRICT COURT
NEW HAVEN, CONN.

FILED

APR 2 9 26 AM '75

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LUDDIE FORT, for herself and for all those similarly situated, ET AL	:	
V.	:	CIVIL NO. H-74-189
ROBERT C. WHITE d/b/a ROBERT C. WHITE CO., REALTORS	:	

MOTION TO RECONSIDER DENIAL OF COUNSEL FEES AND PUNITIVE DAMAGES

Come now the Plaintiffs and pursuant to Rule 59(a) of the Federal Rules of Civil Procedure move the Court to reconsider the denial of punitive damages and attorney's fees contained in the opinion of the Court filed herein on March 13, 1975 and rely in the making hereof on the attached affidavit.

PLAINTIFF,

BY Bruce Mayor
Bruce Mayor
Their Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion was mailed, postage prepaid to Arnold Buchman, Esquire, 101 Pearl Street, Hartford, Connecticut 06103.

Bruce Mayor
Bruce Mayor

67

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LUDDIE FORT, for herself and for all those similarly situated, ET AL	:	
V.	:	CIVIL NO. H-74-189
ROBERT C. WHITE d/b/a ROBERT C. WHITE CO., REALTORS	:	

AFFIDAVIT

I, Bruce Mayor, being duly sworn, depose and say:

1. That I am the attorney for the Plaintiffs in the above-entitled action;

2. That on March 24, 1975, I received the letter which is attached to this Affidavit and marked Exhibit A from Mr. Charles Bennett, Deputy Chief, Housing Section, United States Department of Justice.

Bruce Mayor

Subscribed and sworn to, before me, this 26th day of March, 1975.

Commissioner of the Superior Court

EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

JSP:CDB:jmw
DJ 175-14-29

Mr. Bruce Mayor
Attorney at Law
190 Trumbull
Hartford, Connecticut 06103

Re: Fort, et al. v. Robert C. White, d/b/a
Robert C. White Co., Realtor; C.A. No. H-74-189

Dear Bruce:

This letter is in regard to the Court's opinion of March 13, 1975, in the above-styled case and our conversation concerning it. We decided to write to you directly rather than to file anything with the Court.

We agree with you that the Court's findings would indicate that there was a misunderstanding by the Court as to the nature of the private plaintiffs' participation in the negotiation of the Consent Decree. As we have discussed, Footnote 10 of the Court's opinion states as follows:

> The United States brought suit and obtained a consent decree before this action went to trial, however, see p. 2 supra, and the trial dealt solely with the issue of damages. Thus it is not appropriate to award damages on the basis of the private attorney general theory in this case.

In fact, there was substantial identity of interests between the private and governmental plaintiffs, and you actively participated in the negotiation of the consent decree. Prior to either complaint being filed, representatives of the private plaintiffs furnished the United States with information concerning this case, the first such contact coming on May 24, 1975. In view of the evidence tending to show a pattern and practice of discrimination, they urged the United States to file a lawsuit. Because of the similarity of the subject matter of the two actions, there were frequent contacts between you as counsel for private plaintiffs and myself as the attorney for this Department both before and after the Fort suit was filed. The consent decree of December 18, 1974, which concluded the Attorney General's suit, also partially resolved the private suit, leaving only the unresolved question of damages for litigation.

In passing, I should also note an apparent misreading by the Court of 42 U.S.C. 3610. The Court stated that if the private plaintiff sought United States' participation, he should have done so by notifying the Justice Department under Section 3610. That section does not apply to Justice, but rather to the Department of Housing and Urban Development. Section 3613 is the only section giving standing to the Attorney General to sue for violations.

We appreciate your concern in this matter and are happy to provide you with our understanding of it.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By: CHARLES D. BENNETT, JR.
Deputy Chief, Housing Section

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LUDDIE FORT, for herself and for all those similarly situated, ET AL	:	
v.	:	CIVIL NO. H-74-189
ROBERT C. WHITE d/b/a ROBERT C. WHITE CO., REALTORS	:	

RULING ON MOTION TO AMEND FINDINGS

The plaintiff in this case has requested the court to amend certain of the findings in its opinion of March 13, 1975. The request is directed at a factual error which does not affect the logic or ultimate conclusions of that opinion. The plaintiff should note that agreement by the parties to procure a transcript of the hearing would have insured correctness; the necessity of presenting a detailed and perfectly accurate set of findings from notes alone is burdensome to a trial court.

On page 18 of the Memorandum of Decision in this case the reference to telephone referrals actually applies to the Collins St., not the Woodland St., complex. Thus that discussion will be deleted, and the opinion will read as follows:

> ". . . Other evidence about 7 Woodland St. is consistent with such a conclusion. For instance, the evidence showed that 10% of the tenants at 7 Woodland St. were nonwhite as of May 31 1974 . . . ."

On page 26, line 3 of the continuation of footnote 10 will read as follows:

"government and can sue only if the government"

It is SO ORDERED.

Dated at Hartford, Connecticut, this 22nd day of April, 1975.

M. Joseph Blumenfeld

M. Joseph Blumenfeld
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Luddie Fort
James Bookwalter
Plaintiffs/Appellants

No. 75-7407

vs.

Robert C. White d/b/a
Robert C. White Co., Realtors
Defendant/Appellee

September 15, 1975

CERTIFICATE OF SERVICE

This is to certify that the Appellants have, on the 15th day of September 1975, mailed two copies of Joint Appendix postage prepaid, first class, to the following attorneys: Arnold E. Buchman, Esquire, 101 Pearl Street, Hartford, Conn. and James Callahan, Esquire, 60 Washington Street, Hartford, Conn.

Bruce Mayor
Counsel for the Appellants